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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**CONFEDERATED TRIBES AND
BANDS OF THE YAKAMA NATION,**

Plaintiff,

v.

AIR LIQUIDE AMERICA CORP., a
Delaware corporation; **ARKEMA INC.,** a
Pennsylvania corporation; **BAYER
CROPSCIENCE L.P.,** a Delaware limited
partnership; **BP WEST COAST
PRODUCTS LLC,** a Delaware limited
liability company; **BURLINGTON
NORTHERN AND SANTA FE
RAILWAY,** a Delaware corporation;
CALBAG METALS CO., an Oregon
corporation; **CITY OF PORTLAND,** an
Oregon municipal corporation; **EASTMAN
CHEMICAL CO.,** a Delaware
corporation; **EVRAZ, INC. NA,** a
Delaware corporation; **EXXONMOBIL
CORP.,** a New York corporation; **FMC
CORP.,** a Delaware corporation; **GA-TEK,
INC./GOULD ELECTRONICS, INC.,** a
Delaware corporation; **GUNDERSON**

Case No.: 3:17-cv-00164-SB

**CERTAIN DEFENDANTS’
OPPOSITION TO NW
NATURAL’S NOTICE OF
RELATED CASE**

LLC, an Oregon limited liability company; **KINDER MORGAN BULK TERMINALS, INC.**, a Louisiana corporation; **KINDER MORGAN GP, INC.**, a Delaware corporation; **KOPPERS INDUSTRIES, INC.**, a Pennsylvania corporation; **MCCALL OIL REAL ESTATE CO. LLC**, a Washington corporation; **MMGL CORP.**, a Washington corporation; **MOREC FRONT LLC**, an Oregon liability company; **NORTHWEST NATURAL GAS**, an Oregon corporation; **NUSTAR ENERGY L.P.**, a Delaware limited partnership; **PORT OF PORTLAND**, an Oregon port district; **SCHNITZER STEEL INDUSTRIES, INC.**, an Oregon corporation; **SILTRONIC CORP.**, a Delaware corporation; **STATE OF OREGON**; **SULZER PUMP SERVICES (US) INC.**, a Delaware corporation; **UNION PACIFIC RAILROAD CO.**, a Delaware corporation; **UNITED STATES OF AMERICA**,

Defendants.

For the reasons outlined in Defendant Evraz's Opposition to Defendant United States' Notice of Related Case Pursuant to LR 42-2 (ECF. No. 144), we oppose any designation of this case (hereinafter referred to as the *Yakama* litigation) as related to *Arkema, Inc., et al. v. Anderson Roofing Co. Inc., et al.*, Case No. 3:09-cv-00453-PK (D. Or.). By contemplating the coordination of discovery in the two matters, Defendant Northwest Natural Gas ("NW Natural") appears to go farther, and presents the ultimate consolidation of these cases as inevitable, however any consolidation would be contrary to the interests of the parties in both cases. While the designation of these cases as related does not necessarily mandate a transfer or consolidation,

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the reassignment of judges or consolidation with the *Arkema* case that NW Natural suggests is not appropriate for this case. Consolidation or reassignment of judges would serve only to delay the *Yakama* case and place unnecessary burdens on the other parties, which at least one appellate court has recognized as reasons to not consolidate otherwise generally related cases. *In re Repetitive Stress Injury Litig.*, 11 F.3d 368, 373 (2d Cir.1993).

NW Natural contends that the *Arkema* and *Yakama* cases would benefit from proceeding in parallel discovery, but this ignores the fundamental differences of the two cases. The *Arkema* litigation is under a stay that disallows discovery until January 2018 at the earliest, although the ADR process could take considerably longer to complete. Order of Stay at 2, *Arkema, Inc. v. A&C Foundry Products, Inc.*, No. 3:09-cv-00453-PK (D. Or. May 18, 2010), ECF No. 337 (staying proceedings until one year after the issuance of a Final Record of Decision by EPA). There is no reason at this time to similarly delay the *Yakama* case, where at least some of the parties has expressed a clear interest in moving the case forward without such a delay. The stay in the *Arkema* case means that consolidation with the *Yakama* case would disrupt the appropriate pacing of both cases. The discovery efficiencies that prompt judicial reassignment or case consolidation are missing here.

There is also no reason to burden the myriad parties in the *Arkema* case with discovery or pretrial proceedings of the *Yakama* case. Such a move would be an enormous and unnecessary burden on those parties in the *Arkema* case who are not named in the *Yakama* case. The *Yakama* case, on its face, is a complicated matter. There is no benefit to making the case even more complicated by disrupting its normal timeline and adding dozens of unnamed and unnecessary parties. The *Yakama* case is no more related to the *Arkema* case than any of the number of

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insurance coverage cases regarding the Portland Harbor Superfund Site proceeding in this District.

Even if the Court considers this case related to the *Arkema* case, the only appropriate future action is coordination with the *Arkema* court if the ADR process is completed or the stay is lifted. Should circumstances far in the future shift the course of the *Arkema* litigation, the Court will be fully able to coordinate any relevant procedures at that time. The undersigned parties request that all parties have a full opportunity to respond before any reassignment of judges or consolidation occurs and that the Court decline to take any such action *sua sponte*.

DATED this 17th day of May, 2017.

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CERIFICATE OF SERVICE

I hereby certify that on May 17, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel of record listed below.

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I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on May 17, 2017 at Portland, Oregon.

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